AFT Connecticut
A Union of Professionals

Testimony of
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AFT Connecticut

Public Health Committee Public Hearing
March 19, 2014

SB 460 An Act Concerning Hospital Conversions And Other Matters Affecting Hospitals
HB 5571 An Act Concerning Certificate of Need Requirements, Hospital Conversions and Medical Foundations.

Good afternoon Senator Gerratana, Representative Johnson and members of the Public Health Committee. My name is Melodie Peters and I am the President of AFT Connecticut, a diverse union of nearly 29,000 members. We are proud to represent more healthcare workers in acute care hospitals than any other collective bargaining agent, including approximately 700 members at Manchester and Rockville Hospitals which belong to the Eastern Connecticut Health Network (ECHN). Thank you for the opportunity to speak to you today in support of SB 460 and HB 5571.

Our healthcare landscape is rapidly changing. The Affordable Care Act, increased reliance on expensive technology, economies of scale and profit-taking opportunities have spurred the growth of large multi-state for-profit healthcare corporations. These corporations have set their sights on Connecticut hospitals, while large in-state non-profit hospital systems also seek to expand.

How will these changes affect Connecticut's patients, communities and workers? Will the quality of healthcare be enhanced and will Connecticut's residents continue to receive high quality, affordable and secure care, or will profitability and the bottom line drive healthcare decisions?

Connecticut's rules and statutes are inadequate to protect citizens from the impacts profit-driven healthcare can create. Together, SB 460 and HB 5571 strike a balance between protecting the concerns of patients, communities and healthcare professionals while allowing hospitals to pursue conversion options. AFT Connecticut wholeheartedly supports these bills.

SB 460

We applaud the Committee for attempting to strengthen our hospital conversion statute by expanding the role of the Attorney General, improving transparency and providing safeguards for the community.

With your indulgence, I have included proposed language to further strengthen some of the definitions in Section 2. They include an expansion of the term "community benefit" in order to fully protect access to patient care, an addition to the term "conversion" to include non-profit to non-profit conversions and a more comprehensive definition of "uncompensated care."

> Sec. 2. Section 19a-486 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2014*):

*(9) "**Community benefit**" means the provision of direct and preventive hospital services and protections for the community and hospital employees that meet the ongoing needs of the community for primary and emergency care in a manner that enables members of the community to maintain a relationship with a family member or other person who is hospitalized or receiving hospital services and shall include ~~s~~ from the time of any hospital ownership change or collaboration, but is not limited to, maintaining or increasing patient care, staffing ratios, charity care and uncompensated care, maintaining or increasing spending on public health and community outreach programs, a baseline community needs assessment by an independent evaluator and ongoing biennial reporting online, using data from the department of public health's health impact studies and other resources to identify appropriate care levels and needs, the progress of community benefit efforts, including those required by statute and local community benefit agreements.*

*(10) "**Conversion**" means any transfer by a person or persons of an ownership or membership interest or authority in a hospital, or the assets of a hospital, whether by purchase, merger, consolidation, lease, gift, joint venture, sale, or other disposition which results in a change of ownership or control or possession of twenty percent or greater of the members or voting rights or interests of the hospital or of the assets of the hospital or pursuant to which, by virtue of the transfer, a person, together with all persons affiliated with the person, holds or owns, in the aggregate, ten percent or greater of the membership or voting rights or interests of the hospital or of the assets of the hospital, or the removal, addition or substitution of a partner which results in a new partner gaining or acquiring a controlling interest in the hospital, or any change in membership which results in a new person gaining or acquiring a controlling vote in the hospital; or any change in ownership or membership interest or authority in a hospital, or the assets of a hospital, whether by purchase, merger, consolidation, lease, gift, joint venture, sale, or other disposition which moves a service provided by or assets held by the hospital or healthcare facility to another entity, shadow entity, alter ego corporation or any other structure that has any impact on tax or employment issues.*

*(13) "**Uncompensated care**" ~~has the same meaning as in section 19a-659.~~ means the total amount of charity care, bad debt, and less than full Medicaid reimbursement amounts determined by using the hospital's published charges and consistent with the hospital's policies regarding charity care and bad debts which are on file at the office of healthcare access.*

(14) "Bad debt" is the cost of services provided by a hospital for which it bills but does not collect.

SB 460 requires the transacting parties, whether for-profit and non-profit or all non-profit, to be fully transparent in all of their conversion dealings. It is a responsible approach that gives the Attorney General the full complement of information needed for review and will allow him to best represent the interests of the state when making his determinations. The enhanced process allows for reasonable timelines with extensions when warranted. It does not pose a burden for healthcare corporations in this respect. It even provides for an expedited review process in certain circumstances.

We urge the committee to provide the same safeguards for workers in non-profit to for-profit conversions as at least appears in Section 9 for non-profit to non-profit conversions. These are minimum protections to workers who are employed by hospitals who refuse to bargain in good faith or who lack union representation. Worker protections could be further enhanced in all types of conversions by incorporating the language that appears in HB 5257, which is attached to my testimony.

AFT Connecticut has particular experience on this issue. Last year ECHN executives decided to pursue a for-profit partner which later resulted in a signed letter of intent between ECHN and Tenet Healthcare Corp. and the Yale New Haven Health System. ECHN executives initiated substantive

discussions with union representatives about their intentions. Ultimately this dialogue resulted in significant changes to existing collective bargaining agreements, and perhaps more importantly, continues to provide an important line of communication between ECHN and its employees throughout this transition. You will hear more from our ECHN union leaders directly later today.

While we have reached an understanding with ECHN executives about their proposed conversion with Tenet Healthcare Corp. and the Yale New Haven Health System, there is no guarantee that every hospital seeking a conversion has acted or will act. That is exactly the reason we need enhanced measures in SB 460 – ones that would require transacting parties to guarantee union recognition, honored collective bargaining agreements and a commitment to maintain safe staffing levels.

We have encouraged ECHN executives to engage the community they serve with the same spirit they involved employees. It is our hope that such a process would move hospitals away from simply threatening closure toward a responsiveness and accountability to community needs and concerns. Section 11 ensures this accountability will take place whether the hospital engages in community dialogue or not. By requiring an independent healthcare access monitor, funded by the for-profit hospital, to facilitate this dialogue between the hospital, Attorney General, community members and the Department of Public Health, SB 460 creates a mechanism for success.

Part of community responsibility is paying taxes. For-profit hospitals can and should pay property taxes, but they should do more than what Section 12 requires, which is for the for-profit hospital to reimburse the municipality for PILOT grants it would have received for real property owned by the former non-profit hospital during the transition year. We suggest that for-profit hospitals, should pay municipal property taxes on the fully assessed value of their real property and they should not be eligible for any tax credits or abatements in all future years and urge you to adopt the proposed language below:

> *Sec. 12. (NEW) (Effective October 1, 2014) When a for-profit corporation and a nonprofit hospital are transacting parties to a conversion that is approved by the Attorney General and the Commissioner of Public Health pursuant to sections 19a-486a to 19a-486h, inclusive, of the general statutes, as amended by this act, and the Attorney General and the commissioner approve the conversion during a municipality's assessment year, the purchaser that is a for-profit corporation shall reimburse the municipality in which the new hospital is located for grants in lieu of taxes, as provided in section 12-20a of the general statutes that the municipality would have received for real property formerly owned by the nonprofit hospital except for such conversion for the portion of the year that the hospital conversion has been completed. In future assessment years, municipalities shall not be eligible to receive grants in lieu of taxes as specified in section 12-20a with respect to real property owned wholly or in part by for-profit hospitals, clinics or outpatient facilities. For-profit hospitals and health systems shall pay property taxes on the fully assessed value of all real property to the municipalities in which those facilities are located and shall not be eligible for any tax subsidies, abatements or other reductions in any tax levied at the state or municipal level.*

HB 5771

Current statute requires a healthcare facility to obtain a certificate of need prior to terminating certain services. HB 5571 would expand that requirement for healthcare facilities seeking to terminate reproductive services. We support this type of regulation to protect patient access, but believe it could be strengthened by actually defining "termination." Neither current statute, nor HB 5571 does this. As a

result, hospitals can dramatically curtail the provision of services and all but cease delivery of care without requiring a certificate of need. Therefore, we suggest that you amend Section 19a-63 of the general statutes to define "termination":

> *(15) "Termination" means the (a) temporary or permanent cessation or (b) the transfer to another location of services provided by a health care facility for inpatient care, outpatient care, mental health care, substance abuse services, surgical services, emergency department services, reproductive services, end-of-life services, and any other services currently provided.*

In addition, we appreciate the committee's effort to clarify who can be employed by a medical foundation. The lack of clarity in this area has provided a loophole for non-profit hospitals that have used the foundations to move services to create non-union shops under its corporate umbrella. Such a change would protect all workers in this state, including over 800 of our members at Lawrence & Memorial Hospital who were forced to stage an unfair labor practices strike and endure an illegal employer lockout in order protect their job security when hospital created an alter ego corporation and outsourced their jobs.

Further work may be required to address Tenet Healthcare Corporation's blatant partnership with Yale New Haven Health System as an attempt to work around Connecticut's prohibition on for-profit medical foundations. Tenet appears to be using Yale as non-profit front to do what the law does not allow them to do independently. It may be appropriate to prohibit such a practice in order to protect continued access to quality patient care.

Thank you for the opportunity to testify before you today. By supporting SB 460 and HB 5571, we are not speaking out for ourselves as healthcare professionals alone – we are speaking out for our patients, their families and our communities. We want our hospitals to be responsive to their communities and provide access to all, not just to those who can pay for profitable services. We cannot allow a new system that blindly permits for-profit companies to put their bottom lines ahead of patient care. For these reasons, we strongly urge you to pass SB 460 and HB 5571.

General Assembly

February Session, 2014

Raised Bill No. 5257

LCO No. **1147**

Referred to Committee on LABOR AND PUBLIC EMPLOYEES

Introduced by:

(LAB)

AN ACT CONCERNING HOSPITAL EMPLOYEES AND HOSPITAL CONVERSIONS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (*Effective from passage*) (a) As used in this section and section 2 of this act:

(1) "Affected community" means the city or town in which a nonprofit hospital is located and the cities or towns whose inhabitants are regularly served by a nonprofit hospital;

(2) "Conversion" means any transfer by a person or persons of the assets or operation of a nonprofit hospital to a person or persons that is organized or operated for profit, that results in (A) a change in the ownership, control or possession of not less than twenty per cent of (i) the voting rights or interests in the nonprofit hospital, or (ii) the assets of the nonprofit hospital; (B) a person previously unaffiliated with the nonprofit hospital possessing not less than ten per cent of (i) the voting rights or interests in the nonprofit hospital, or (ii) the assets of the nonprofit hospital; or (C) the removal, addition or substitution of a person holding an ownership or membership interest in the nonprofit hospital that results in a previously unaffiliated person gaining or acquiring a controlling interest or controlling vote in the nonprofit hospital;

(3) "Nonprofit hospital" has the same meaning as provided in section 19a-486 of the general statutes;

(4) "Person" means any individual, trust or estate, firm, partnership, corporation, limited liability company or other entity, including the state and any political subdivision thereof; and

(5) "Transfer" has the same meaning as provided in section 19a-486 of the general statutes.

(b) Prior to undergoing a conversion, the nonprofit hospital and the person or persons seeking the assets or operation or a change in control of operations of the nonprofit hospital shall enter

into a written memorandum of understanding to preserve community benefits in the affected community. The memorandum of understanding shall require the person or persons seeking the assets or operation or a change in control of operations of the nonprofit hospital to: (1) Maintain the current rates of pay and current benefits of all employees employed at the nonprofit hospital at the time of conversion; (2) recognize any labor organizations representing employees employed at the nonprofit hospital at the time of conversion; (3) honor any collective bargaining agreements entered into between a labor organization and the nonprofit hospital; (4) maintain staffing levels at the time of conversion for not less than three years following the date the Attorney General and Commissioner of Public Health have approved the conversion pursuant to section 19a-486b of the general statutes; and (5) follow best practices for staffing levels to assure patient care and safety.

(c) Prior to undergoing a conversion, the city or town in which the nonprofit hospital is located shall hold not less than three public hearings. The public hearings shall be open to all members of the public in the affected community and shall include, but not be limited to: (1) A discussion of the conversion and the person or persons seeking the assets or operation or a change in control of operations of the nonprofit hospital; (2) a summary of the potential impact of the proposed conversion on employment at the nonprofit hospital; and (3) an opportunity to question representatives of the nonprofit hospital and the person or persons seeking the assets or operation or a change in control of operations of the nonprofit hospital about any relevant concerns. Not less than fourteen days prior to each hearing, notice of the time and place of the hearing shall be publicized in one or more newspapers of general circulation in the affected community. Each public hearing shall take place at least sixty days before a certificate of need application is filed with the Department of Public Health pursuant to section 19a-486a of the general statutes.

Sec. 2. (NEW) (*Effective from passage*) Not later than thirty days after undergoing a conversion, the person or persons having acquired possession of the assets or operation of the former nonprofit hospital shall submit a five-year strategic plan to the Department of Public Health and the Labor Department detailing how employment may be affected by decisions to grow or reduce health care services at the hospital.

This act shall take effect as follows and shall amend the following sections:		
Section 1	*from passage*	New section
Sec. 2	*from passage*	New section

Statement of Purpose:

To educate and protect hospital workers and community members who may be subject to a hospital conversion by requiring a series of public hearings and requiring any group seeking to acquire a nonprofit hospital conversion to commit to certain staffing requirements prior to initiating the acquisition.